IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7911 OF 2005

Dadya Kangarya Shinde @
Satish Kerba Toradmal ... Applicant

versus

State of Maharashtra ... Respondent

Vikas Shivarkar for applicant.
K.V.Saste, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 13th December 2005

PC :

1. Heard learned advocate for applicant and Shri Saste - learned APP for respondent. This bail application reveals sorry state of affairs.

2. Although serious offences are alleged against the applicant and other accused, the learned Magistrate had no time to commit this case to sessions. The incident is of 3rd November 2001. In para no.3 of this application it is pointed out that the learned JMFC, Madha has not committed this case to sessions for last four years.

3. The incident is that on 3rd November 2001 about 14 to 15 persons including the present applicant committed dacoity at the house of one Nazir Mohamad Shaikh. The allegation is that on

this very night these 14-15 persons committed dacoity at about eight places. The complainant has stated that although it was dark, he could see three persons namely Dhanya Vaman Bhosale, present applicant and Shanya Kale. Although he had spotted them the others gheraoed him and one of them assaulted him with the sword and the other gave him a blow by wooden stick on the legs. It is alleged that these persons took away everything including monies on complainant's person. So also, jewellery from the person of his wife and mother, were removed by the accused. It is alleged that while leaving the premises these persons threatened the complainant with dire consequences. They locked him and his family members inside and bolted the residential premises. It is the complainant's brother who has allegedly rescued them.

4. It is pertinent to note that on record is an affidavit of this very complainant affirmed as back as on 12th August 2002 wherein he has said very clearly that when his complaint was recorded by the Police he had not mentioned that the accused belong to Pardhi Community and that these persons had allegedly entered the place, threatened him and committed dacoity.

5. It is not disputed before me that the bail applications preferred by accused nos.1, 4 and 5 have been granted. As far as accused no.7 is concerned, initially it was informed that he has jumped bail. Later on it was discovered that it was an incorrect statement of the prosecution.

6. The present applicant has not been released despite parity for the reason that he was absconding from the date of incident. He was residing in some other village and has changed his name. It is brought to my notice that similar was the case with regard to other absconding accused namely Sanjay Shinde who was also released on bail and against whom self same allegations of impersonation are made.

7. It is unfortunate that the learned Sessions Judge has not taken into consideration all these aspects. She has proceeded to reject the bail application by a laconic and cryptic order. Merely because applicant was absconding and he had allegedly changed his name and residing in another village, his application could not have been rejected when the very same Court has considered the application of other accused and enlarged them on bail. There is no reference to any of the aforesaid events including filing of

affidavit by the original complainant. Prima facie there is substance in the plea that despite repeal of Criminal Tribes Act, the Phasey-pardhi Community is continuously hounded by the Police and charged with offences which are serious in nature including dacoity. Most of these cases appear to be because the community having been branded for decades together as a criminal tribe. While it is true that general observations would not apply to all cases, but this instance demonstrates that the complaint of this community about being hounded by Police, is genuine. Prima facie, the applicant-accused ought to have been enlarged on bail in this case with identical conditions. Moreso, when he has specifically made a statement in this application that he is permanently residing at Patil Vasti, Shahapur Road, Ichalkarangi.

8. In the circumstances, following order :-

(i) The applicant shall be enlarged on bail in connection with C.R.No.79/2001 registered with Kurduwadi Police Station, Kurduwadi, subject to furnishing a personal bond of Rs.10,000/- (Rs.Ten thousand only) with one local solvent surety in the like sum;

(ii) The applicant shall report to Ichalkarangi Police Station twice a week between 10.00 to 12.00 p.m;

(iii) The applicant shall not enter jurisdiction of Kurduwadi Police Station till trial is concluded;

(iv) The Trial Court is directed to decide this case day to day and endeavour to dispose of the same within a period of six months from the date of receipt of a copy of this order;

(v) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(vi) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(vii) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(viii) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)